IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11932 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINUBHAI FULABHAI DOBARIA

Versus

CHIEF CONTROLLING REVENUE OFFICER

Appearance:

1. Special Civil Application No. 11932 of 2004

MR DAKSHESH MEHTA for Petitioner No. 1

MR MR MENGDEY, AGP for Respondent No. 1-2

RULE SERVED BY DS for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Chief Controlling Revenue Authority, State of Gujarat dated 28.07.2004 by which the appeal preferred by the petitioner has been dismissed on the ground of delay. Though the petitioner has challenged the order dated 28.02.2001 but the relief which is sought for is directing respondent no. 1 to entertain the appeal on merits by condoning the delay.

#. It is the contention on behalf of the petitioner that the petitioner came to know about the impugned order in the month of July, 2004 and on getting the certified copy of the order on 12.07.2004, immediately the appeal has been preferred and therefore it is within the prescribed time limit of 90 days. Mr.Mehta, learned advocate appearing for the petitioner, has relied upon the application submitted by the petitioner dated 20.07.2004 submitted along with the appeal memo and submitted that without considering the same, respondent no.1 Chief Controlling Revenue Authority has passed the impugned order dismissing the appeal on the ground of delay, as, the same is filed after a period of 90 days and that too without giving any opportunity to the petitioner.

#. Mr.Mengdey, learned A.G.P. appearing for the respondents has fairly conceded that before passing the impugned order by respondent no.1 and dismissing the appeal on the ground of delay, no opportunity has been given to the petitioner and the same has been passed without giving opportunity to the petitioner.

#. Heard the learned advocates for the parties.

#. Apart from the fact that petitioner was not heard before passing the impugned order dated 28.07.2004 by respondent no.1, even there is no discussion in the order, by which, it can be said that respondent no.1 has considered the application of the petitioner dated 20.07.2004 which was submitted along with the appeal memo pointing out that the petitioner came to know of the impugned order in the month of July 2004. It appears that respondent No.1 has not considered the same. Under the circumstances, while quashing and setting aside the impugned order dated 28.7.2004 passed by respondent No.1, the matter is required to be remanded to respondent No.1 and is required to be directed to pass a fresh order considering the application submitted by the petitioner dated 20.7.2004 which was submitted along with the appeal memo and after giving opportunity to the petitioner and after calling for the record and proceedings from the

office of the Deputy Collector, Stamp Duty Valuation, Amreli with regard to the service of the order dated 28.2.2001 to the petitioner. If it is found by respondent No.1 that earlier the petitioner was not served with the order dated 28.2.2001 passed by the Deputy Collector, Stamp Duty Valuation, Amreli and the petitioner came to know of the aforesaid order for the first time in the month of July 2004, respondent No.1 is directed to consider the appeal on merits and in accordance with law.

#. For the reasons stated above, the petition succeeds. The impugned order dated 28.7.2004 passed by respondent No.2 in rejecting the appeal preferred by the petitioner on the ground of delay is quashed and set aside and the matter is remanded to respondent to pass the order afresh, as stated above, considering the aforesaid observations, within a period of three months from the date of the receipt of the writ of this order.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)